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available to the parties by the Civil Aeronautics Board or published privately.

29. The ABC World Airways Guide, Thomas Skinner and Co., Ltd., from June 1950.

30. ICAO Statistical Summary, Preliminary Issue and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by the International Civil Aviation Organization, Montreal, Canada, with all changes and additions.

31. Foreign-Commerce Yearbook, from 1951, U.S. Department of Commerce, office of International Trade.

32. Statistical Abstract of the United States, from 1953, U.S. Department of Commerce, Bureau of Census.

33. Yearbook of International Trade Statistics, from 1956.

34. Annual Reports of the Immigration and Naturalization Service, U.S. Department of Justice, from fiscal year ended June 30, 1945.

35. Official Steamship and Airways Guide International Transportation Guides, Inc., from June 1945.

36. The Airman's Guide, from 1950, issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereto, issued by the Federal Aviation Administration.

37. Plant and Product Directory of the 500 Largest U.S. Industrial Corporations, from 1961, published by Time Inc.

38. Thomas' Register of American Manufacturers, from 1955, published by Thomas Publishing Company.

39. First and Second Class Post Offices, July 1, 1939-July 1, 1946 and Receipts and Classes of Post Offices, from July 1, 1947, issued by the U.S. Post Office Department.

40. Quarterly Report on Federal Aid to Highways, from March 1960, issued by the Bureau of Public Roads of the U.S. Department of Commerce.

41. All forms and reports required by the Post Office Department to be filed by air carriers certificated to transport mail.

42. All orders of the Postmaster General designating schedules for the transportation of mail.

43. Handbook of Airline Statistics from 1961, prepared by the Bureau of Accounts and Statistics, Civil Aeronautics Board or DOT.

44. CAB Forms 242, 243, 244, and 244A (including all monthly, quarterly, semiannual, and annual reports required to be filed by carriers in connection therewith), filed with the Board or DOT.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (m)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding

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under section 7(d) of the Administrative Procedure Act.

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (m)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters which have been noticed.

§ 302.25 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either of his or her own motion, or at the request of a party, permit the presentation of oral argument. He or she may impose such time limits on the argument as he or she may determine, having regard for other assignments for hearing before him or her. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the DOT decisionmaker for consideration in deciding the case.

§ 302.26 Proposed findings and conclusions before the administrative law judge or the DOT decisionmaker.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his or her consideration briefs to include proposed findings and conclusions of law which shall contain exact references to the record and authorities relied upon. The provisions of this section shall be applicable to proceedings in which the

record is certified to the DOT decisionmaker without the preparation of an initial or recommended decision by the administrative law judge.

§ 302.27 Delegation to administrative law judges and action by administrative law judges after hearing.

(a) *Delegation of authority to make the agency decision subject to discretionary review.* Pursuant to the authority conferred on DOT under section 1601(b)(1) of the Federal Aviation Act of 1958, as amended, there is hereby delegated to each administrative law judge assigned to a particular case subject to this part the DOT decisionmaker's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without a recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 801 of the Act. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters which have been appealed to the DOT decisionmaker in accordance with the requirements of § 302.18. The term "initial decision," as used in this part, shall encompass the administrative law judge's decision pursuant to this delegation of authority on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Action by administrative law judge after hearing.* (1) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every initial decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (c) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file proposed findings

and conclusions with the DOT decisionmaker and supporting briefs.

(2) Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of proposed findings and conclusions, if any, the administrative law judge shall take the following action:

(i) *Cases subject to section 801 of the Act.* In cases where the action of the Department is subject to the approval of the President pursuant to section 801 of the Act, the administrative law judge shall render a recommended decision orally on the record or in writing.

(ii) *Other matters.* If the proceeding relates to any matter not provided for in paragraph (b)(2)(i) of this section, the administrative law judge shall render an initial decision in writing.

(c) *Effect of initial decision.* Unless a petition for discretionary review is filed pursuant to § 302.28, exceptions are filed pursuant to § 302.1754, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department 30 days after service thereof. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision is stayed until the further order of the DOT decisionmaker.

§ 302.28 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.

(a) *Petitions for discretionary review.*

(1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but of the sound discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review by the DOT decisionmaker of an initial decision or recommended decision within 21 days after service thereof, except that the DOT decisionmaker may fix a different period in any decision involving a foreign air carrier where the action of DOT is subject to the approval of the President pursuant to section 801 of the Act. Such petitions shall be accompanied by proof of service on all parties.